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13 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
14

15 Ms. L., et al.,

16 *Petitioners-Plaintiffs,*

17 v.

18 U.S. Immigration and Customs Enforcement
("ICE"), et al.

19 *Respondents-Defendants.*
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Case No. 18-cv-00428-DMS-MDD

Date Filed: February 15, 2019

**PLAINTIFFS' SUPPLEMENTAL
REPOSE RE: OIG REPORT**

1 As directed by the Court, plaintiffs file this summary of concerns raised in the
 2 January 2019 OIG Report that the government did not address in its response (Dkt.
 3 347).¹

4 Plaintiffs' primary unaddressed concern is with the 218 separations that
 5 reportedly took place *after* this Court's injunction, through December 26, 2018. OIG
 6 Report (Dkt. 344-1) at 14, 21. OIG noted that these separations are happening at
 7 "more than twice the rate that ORR observed in 2016." *Id.* at 11. The Report analyzed
 8 118 of these separations and found:

- 9 ■ 69 percent of these separations were of children under 13 years old;
 23 percent were of children under 5 years old;
- 10 ■ Some children were reported by ORR as separated on the basis of
 11 "immigration history only"; or because the adult lacked proof of legal
 12 guardianship; or with so little detail provided that OIG could not
 13 determine the reason for separation and referred these cases to HHS
 14 for explanation;
- 15 ■ Because DHS is providing limited information to ORR about the
 16 reasons for separations, this "may impede ORR's ability to determine
 the appropriate placement for a child."

17 *See id.* at 11-12, n.22.

18 The government does not address the rate of post-June 26 separations or the
 19 reasons for them, nor does it address whether separations for "immigration history
 20 only," for example, comply with the Court's injunction. *See id.* at 12 (noting the
 21 "reason for separation is pertinent to *Ms. L*" because separations are enjoined with
 22 limited exception); July 16, 2018, Hearing Transcript at 53:16-18 ("THE COURT:

23 ¹ The issue of thousands of additional children separated from their parents and
 24 released from ORR care before June 26 is addressed in the pending Motion to Clarify
 25 Scope of the *Ms. L* Class (Dkt. 335).

1 Based on what I have been hearing, especially from Commander White today, that I
2 would be making the assumption that 1325, 1326 collectively would not exclude.”).

3 This concern is particularly salient in light of recent disclosures from the
4 government’s counsel of purported criminal exclusions from *Ms. L* — one parent was
5 reported as excluded on the basis of a littering conviction, another for a fake ID —
6 which raise concerns that ongoing separations may not be in compliance with the
7 Court’s orders. Plaintiffs are also hearing from advocates that the government is
8 separating a substantial number of families, and thus there may be more than 218
9 post-June 26 separations. In light of the OIG Report and information from advocates
10 on the ground, plaintiffs intend to raise with the Court the need to ensure that there are
11 (1) clear standards for future separations by DHS, and (2) a meaningful process to
12 ensure that families can contest separations.

13 Finally, as the Court is aware, in December the government reported 149
14 additional separated children. Most were released from ORR care after the June 26
15 preliminary injunction and before the government certified a list of separated children
16 on July 11. The OIG Report found about 300 potentially separated children did not
17 appear in the July 11 list, and were released from ORR care in the same June 26-July
18 11 window. OIG Report at 9-10. The difference between about 300 and 149 additional
19 separated children is not addressed in the government’s response.

20 Plaintiffs will confer with the government about the above issues and update the
21 Court in future status reports.

22 Dated: February 15, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2019, I electronically filed the foregoing with the Clerk for the United States District Court for the Southern District of California by using the appellate CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

/s/ Lee Gelernt
Lee Gelernt, Esq.
Dated: February 15, 2019